

Proposed Amendments to Rule 11

Rule 11 is amended as follows:

Rule 11. Signing [of] Pleadings, Motions, and Other Papers; **Representations to the Court**; Sanctions

(a) Signature. Every pleading, written motion, and other paper [shall] **must** be signed by at least one attorney of record in the attorney's [individual] name[, or, if the party is not represented by an attorney, shall be signed by the party] – **or by a party personally if the party is unrepresented**. Every pleading, **written** motion, or other paper of the United States [shall] **must** be signed by an attorney authorized to do so on behalf of the Assistant Attorney General, Civil Division, Department of Justice. A pleading, **written** motion, or other paper of an agency of the United States, authorized by statute to represent itself in judicial proceedings, [may] **must** be signed by an attorney authorized to do so on behalf of the agency. Each paper [shall] **must** state the signer's address, **e-mail address**, and telephone number[, if any]. [Except when otherwise specifically provided by rule or statute] **Unless a rule or statute specifically states otherwise**, pleadings or other papers need not be verified or accompanied by affidavit. [An] **The court must strike an** unsigned paper [shall be stricken] unless **the** omission [of the signature] is [corrected] promptly **corrected** after being called to the **attorney's or party's** attention [of the pleader or movant attorney or party].

(b) Representation to Court. By presenting to the court [(whether by signing, filing, submitting, or later advocating)] a pleading, written motion, or other paper[,] – **whether by signing, filing, submitting, or later advocating it** – an attorney or unrepresented party [is certifying] **certifies** that to the best of the person's knowledge, information, and belief, formed after any inquiry reasonable under the circumstances[,] :

(1) it is not being presented for any improper purpose, such as to harass ~~[or to]~~, cause unnecessary delay, or ~~[needless]~~ **needlessly** increase ~~[in]~~ the cost of litigation;

(2) the claims, defenses, and other legal contentions ~~[therein]~~ are warranted by existing law or by a ~~[non-frivolous]~~ **nonfrivolous** argument for ~~[the extension, modification, or reversal of]~~ **extending, modifying, or reversing** existing law or ~~[the establishment of]~~ **for establishing** new law;

(3) the ~~[allegations and other]~~ factual contentions have evidentiary support or, if specifically so identified, ~~[are]~~ **will** likely ~~[to]~~ have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are ~~[reasonable]~~ **reasonably** based on **belief or** a lack of information ~~[or belief]~~.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that ~~[subdivision (b)]~~ **Rule 11(b)** has been violated, the court may~~[, subject to the conditions stated below,]~~ impose an appropriate sanction ~~[upon the attorneys, law firms, or parties that have violated subdivision (b) or are]~~ **on any attorney, law firm, or party that violated the rule or is** responsible for the violation. **Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.**

~~[(1) How Initiated]~~

~~[(A) By Motion.]~~

(2) Motion for Sanctions. A motion for sanctions ~~[under this rule shall]~~ **must** be made separately from **any** other ~~[motions or requests]~~ **motion** and ~~[shall]~~ **must** describe the specific conduct ~~[alleged to violate subdivision (b)]~~ **that allegedly violates Rule 11(b).** ~~[It shall]~~ **The motion must** be served ~~[as provided in]~~ **under** Rule 5, but ~~[shall]~~ **it must** not be filed ~~[with]~~ or **be** presented to the court ~~[unless, within 21 days after service of the motion (or such other period as the court may prescribe),]~~ **if** the challenged paper, claim, defense, contention, ~~[allegation,]~~ or denial is ~~[not]~~ withdrawn or appropriately corrected **within 21 days after service or within another time the court sets.** If warranted, the court may award to the ~~[party]~~ prevailing **party** ~~[on the motion]~~ the reasonable expenses ~~[and]~~, **including** attorney's fees, incurred ~~[in presenting or opposing]~~ **for** the motion. ~~[Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.]~~

~~[(B) On Court's Initiative.]~~

(3) On the Court's Initiative. On its own ~~[initiative]~~, the court may ~~[enter an order describing the specific conduct that appears to violate subdivision (b) and directing]~~ **order** an attorney, law firm, or party to show cause why ~~[it]~~ **conduct specifically described in the order** has not violated ~~[subdivision (b) with respect thereto]~~ **Rule 11(b).**

~~[(2) Nature of Sanction; Limitations.]~~

(4) Nature of a Sanction. A sanction imposed ~~[for violation of]~~ **under** this rule ~~[shall]~~ **must** be limited to what ~~[is sufficient]~~ **suffices** to deter repetition of ~~[such]~~ **the** conduct or comparable conduct by others similarly situated. ~~[Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature,]~~ **The sanction may include nonmonetary directives;** an order to pay a penalty into court~~[,]~~; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of ~~[some]~~ **part** or all of the reasonable attorney's fees and other expenses ~~[incurred as a direct result of]~~ **directly resulting from** the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) ~~[Monetary sanctions may be awarded]~~ against a represented party for ~~[a violation of subdivision (b)(2).]~~ **violating Rule 11(b)(2); or**

(B) ~~[Monetary sanctions may not be awarded on the court's initiative]~~ **on its own**, unless ~~[the court issues its order to show cause]~~ **it issued the show-cause order under Rule 11(c)(3)** before ~~[a]~~ voluntary dismissal or settlement of the claims made by or against the party ~~[which]~~ **that** is, or whose attorneys are, to be sanctioned.

~~[(3) Order.]~~

(6) Requirements for an Order. ~~[When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule]~~ **An order imposing a sanction must describe the sanctioned conduct** and explain the basis for the sanction ~~[imposed].~~

(d) Inapplicability to Discovery. [~~Subdivisions (a) through (c) of this rule do~~] **This rule does** not apply to disclosures and discovery requests, responses, objections, and motions [~~that are subject to the provisions of~~] **under** Rules 26 through 37.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 28, 2004, eff. January 1, 2005; _____, **2008, eff.** _____, **2009**.)

Advisory Committee Note

The language of Rule 11 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 11(a) has also been corrected to indicate that a paper filed on behalf of an agency having authority to represent itself before the Court “must” (rather than “may”) be signed by an attorney authorized by the agency.